

JS 44C/SDNY
REV. 12/2005

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Ethan Allen Global, Inc.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Wiggan and Dana
450 Lexington Avenue, New York, NY 10017
(212) 490-1700

DEFENDANTS

Peoples Americana, Inc.;
Peoples Van DeWald;
Herschel D. Pruitt

ATTORNEYS (IF KNOWN)

Scott D. Corrigan

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Trademark Infringement 15 U.S.C. 1141 and 1125 and

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously AssignedIf yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
		PERSONAL INJURY		PERSONAL INJURY		[422 APPEAL 28 USC 158		[400 STATE REAPPORTIONMENT	
[110 INSURANCE	[310 AIRPLANE	[362 PERSONAL INJURY -	[610 AGRICULTURE	[423 WITHDRAWAL	[410 ANTITRUST				
[120 MARINE	[315 AIRPLANE PRODUCT	MED MALPRACTICE	[620 FOOD & DRUG	28 USC 157	[430 BANKS & BANKING				
[130 MILLER ACT	LIABILITY	[365 PERSONAL INJURY	[625 DRUG RELATED		[450 COMMERCE/ICC				
[140 NEGOTIABLE	[320 ASSAULT, LIBEL &	PRODUCT LIABILITY	SEIZURE OF		RATES/ETQ				
INSTRUMENT	SLANDER	[368 ASBESTOS PERSONAL	PROPERTY		[460 DEPORTATION				
[150 RECOVERY OF	[330 FEDERAL	INJURY PRODUCT	[630 LIQUOR LAWS	PROPERTY RIGHTS	[470 RACKETEER INFLU-				
OVERPAYMENT &	EMPLOYERS'	LIABILITY	[640 RR & TRUCK	[820 COPYRIGHTS	ENCED & CORRUPT				
ENFORCEMENT OF	LIABILITY		[650 AIRLINE REGS	[830 PATENT	ORGANIZATION ACT				
JUDGMENT	[340 MARINE	PERSONAL PROPERTY	[660 OCCUPATIONAL	[840 TRADEMARK	(RICO)				
[151 MEDICARE ACT	[345 MARINE PRODUCT	[370 OTHER FRAUD	[690 OTHER		[480 CONSUMER CREDIT				
[152 RECOVERY OF	LIABILITY	[371 TRUTH IN LENDING		SOCIAL SECURITY	[490 CABLE/SATELLITE TV				
DEFAULTED	[350 MOTOR VEHICLE	[380 OTHER PERSONAL	LABOR	[861 MIA (1395FF)	[810 SELECTIVE SERVICE				
STUDENT LOANS	[355 MOTOR VEHICLE	PROPERTY DAMAGE	[710 FAIR LABOR	[862 BLACK LUNG (923)	[850 SECURITIES/				
(EXCL VETERANS)	PRODUCT LIABILITY	PRODUCT LIABILITY	STANDARDS ACT	[863 DIWC (405(g))	COMMODITIES/				
[153 RECOVERY OF	[360 OTHER PERSONAL		[720 LABOR/MGMT	[863 DIWW (405(g))	EXCHANGE				
OVERPAYMENT OF	INJURY		RELATIONS	[864 SSID TITLE XVI	[875 CUSTOMER				
VETERANS BENEFITS'			[730 LABOR/MGMT	[885 RSI (405(g))	CHALLENGE				
[160 STOCKHOLDERS SUITS			REPORTING &		12 USC 3410				
[190 OTHER CONTRACT			DISCLOSURE ACT		[891 AGRICULTURE ACTS				
[195 CONTRACT PRODUCT			[740 RAILWAY LABOR ACT	FEDERAL TAX SUITS	[892 ECONOMIC				
LIABILITY			OTHER LABOR	[870 TAXES	STABILIZATION ACT				
[196 FRANCHISE			LITIGATION	[871 IRS-THIRD PARTY	[893 ENVIRONMENTAL				
	ACTIONS UNDER STATUTES		[791 EMPL RET INC	20 USC 7609	MATTERS				
		PRISONER PETITIONS	SECURITY ACT		[894 ENERGY				
REAL PROPERTY	CIVIL RIGHTS				ALLOCATION ACT				
[210 LAND CONDEMNATION	[441 VOTING	[510 MOTIONS TO			[895 FREEDOM OF				
[220 FORECLOSURE	[442 EMPLOYMENT	VACATE SENTENCE			INFORMATION ACT				
[230 RENT LEASE &	[443 HOUSING	28 USC 2255			APPEAL OF FEE				
EJECTMENT	[444 ACCOMMODATIONS	[530 HABEAS CORPUS			DETERMINATION				
[240 TORTS TO LAND	[445 WELFARE	[535 DEATH PENALTY			UNDER EQUAL ACCESS				
[246 TORT PRODUCT	[445 AMERICANS WITH	[540 MANDAMUS & OTHER			TO JUSTICE				
LIABILITY	DISABILITIES -	[550 CIVIL RIGHTS			[950 CONSTITUTIONALITY				
[290 ALL OTHER	EMPLOYMENT	[555 PRISON CONDITION			OF STATE STATUTES				
REAL PROPERTY	[446 AMERICANS WITH				[980 OTHER STATUTORY				
	DISABILITIES -OTHER				ACTIONS				
	[440 OTHER CIVIL RIGHTS								

(PLACE AN x IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2a. Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☒ 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES, ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant).

CITIZEN OF THIS STATE	PTF DEF [] []	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] []	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] []
CITIZEN OF ANOTHER STATE	<input checked="" type="checkbox"/> [] []	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input checked="" type="checkbox"/> [] []	FOREIGN NATION	[] []

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Ethan Allen Drive
Danbury, CT

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Peoples American Ins. and JJ Peoples
192 Lexington Avenue
New York, NY
~~Van DeWald~~

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Van DeWald
Herschel D. Pruitt

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
(DO NOT check either box if this is a PRISONER PETITION.)

DATE SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

RECEIPT #

☒ YES (DATE ADMITTED Mo. 6 Yr. 1996)
Attorney Bar Code # 5545

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JUDGE SPRIZZO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ETHAN ALLEN GLOBAL, INC.

Plaintiff,

v.

PEOPLES AMERICANA, INC.,
JJ PEOPLES, VAN DEWALD, and
HERSCHEL D. PRUITT

Defendants.

Case No.

07 CV 7389



AUGUST 20, 2007

**VERIFIED COMPLAINT FOR TRADEMARK INFRINGEMENT
FALSE DESIGNATION OF ORIGIN AND TRADEMARK DILUTION**

Plaintiff Ethan Allen Global, Inc. ("Ethan Allen"), for its Complaint against Defendants Peoples Americana, Inc., JJ Peoples, Van DeWald, and Herschel D. Pruitt, hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action arising under the Trademark Laws of the United States, 15 U.S.C. §§1051 *et seq.* (the "Lanham Act"), and in particular for (a) trademark infringement, in violation of 15 U.S.C. § 1114(1); (b) false designation of origin, in violation of 15 U.S.C. § 1125(a); and (c) trademark dilution, in violation of 15 U.S.C. § 1125(c).

2. This Court has jurisdiction over the subject matter of this action and of the parties pursuant to 28 U.S.C. §§ 1331, 1332, and 1338; 15 U.S.C. § 1121.

THE PARTIES

3. Plaintiff Ethan Allen is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in Danbury, Connecticut.

4. Defendant Peoples Americana, Inc. (“Peoples”) is, upon information and belief, a corporation organized and existing under the laws of the State of New York, having a place of business at 192 Lexington Avenue, New York, NY.

5. Defendant JJ Peoples (“JJ”) is, upon information and belief, a corporation organized and existing under the laws of the State of New York, having a place of business at 192 Lexington Avenue, New York, NY.

6. Defendant Van DeWald (“DeWald”) is an individual who, upon information and belief, is the president of Peoples and JJ. Upon information and belief, DeWald is a resident of either the State of New York or the State of New Hampshire.

7. Defendant Herschel D. Pruitt (“Pruitt”) is an individual who, upon information and belief, is a resident of State of Wyoming.

8. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b) and (c).

FACTUAL BACKGROUND

The ETHAN ALLEN Marks

9. Plaintiff Ethan Allen is a nationally recognized distributor of high-quality home furnishings and design services. Ethan Allen sells its signature furniture, rugs, window treatments and other home products – and offers individualized design services to customers – through a nationwide network of company-owned and independently-owned retail design centers. There are approximately 176 company-owned Ethan Allen retail design centers; those outlets are owned and operated by plaintiff’s corporate affiliate Ethan Allen Retail, Inc.

10. Plaintiff Ethan Allen is the owner of U.S. Trademark Reg. No. 2984367 for “ETHAN ALLEN” for “Retail home furniture, furnishing and appliance store services”; Reg. No. 2952893 for “medicine cabinets, bathroom cabinets and vanities”; Reg. No. 2910032 for

“ETHAN ALLEN” for “Window curtains, draperies and textile wall hangings”; Reg. No. 972404 for “ETHAN ALLEN” for “Pictures, paintings and prints”; Reg. No. 903549 for “ETHAN ALLEN” for “Rugs and upholstery fabrics”; Reg. No. 903855 for “ETHAN ALLEN” for “Clocks”; and Reg. No. 737146 for “ETHAN ALLEN” for “Furniture – namely, household furniture, units for use in either living rooms or bedrooms, cabinets, chests, corner desks, bookcases, beds, headboards for beds, breakfronts, wall racks, buffets, upholstered and unupholstered sofas, love seats, ottomans, chairs, reclining chairs, benches, end tables, corner tables, night tables, cocktail tables, lamp tables, drop-leaf tables, mirrors and magazine racks”; and Reg. No. R26798 for “ETHAN ALLEN” for “Furniture” (collectively, the “ETHAN ALLEN Marks” or the “Marks”). These Registrations are valid, in full force and effect, and incontestable within the meaning of 15 U.S.C. § 1065.

11. Plaintiff Ethan Allen is also the owner of over 40 additional U.S. Trademark Registrations, all of which incorporate or are related to the ETHAN ALLEN Mark. By way of example, plaintiff owns Reg. No. 2562772 for “ETHAN ALLEN AVENUE COLLECTION” for “Furniture and accessories, namely hampers, mirrors, magazine racks, plastic and wood figurines”; Reg. No. 2511485 for “E.A. KIDS” for “Children’s furniture and accessories, namely, mirrors, picture frames, decorative room dividers, decorative shelving, pillows and wooden jewelry boxes”; Reg. No. 2862983 for “ETHAN ALLEN KIDS” for “furniture and accessories, namely, decorative room dividers, decorative shelving, pillows, wooden jewelry boxes, mirrors, magazine racks”; and Reg. No. 2403245 for “ETHAN ALLEN AMERICAN ARTISAN” for “Furniture.” (collectively, the “ETHAN ALLEN Family of Marks”).

12. Plaintiff Ethan Allen, has used the ETHAN ALLEN Mark and ETHAN ALLEN Family of Marks continuously in interstate commerce since 1935.

13. Plaintiff has spent several decades and substantial sums of money advertising, promoting and otherwise cultivating goodwill in the ETHAN ALLEN Mark and the ETHAN ALLEN Family of Marks, such that the marks have come to be associated with high quality goods and services and have attained secondary meaning in the minds of consumers as designating goods and services of particular origin, namely, Plaintiff Ethan Allen.

14. As a result of the long and extensive use and advertisement of the ETHAN ALLEN Mark and the ETHAN ALLEN Family of Marks in connection with Plaintiff's goods and services, the ETHAN ALLEN Mark has become closely associated with Plaintiff, has become exceedingly well-recognized and has acquired great value, and identifies Plaintiff and its goods and services exclusively.

Defendants' Use of the ETHAN ALLEN Marks

15. Until July 27, 2007, defendant DeWald, through either or both of his companies Peoples and/or JJ (collectively, for ease of reference, Peoples, JJ and DeWald will be referred to herein as "DeWald") was an authorized Ethan Allen retailer operating most recently at 192 Lexington Avenue in New York City.

16. Until July 27, 2007, DeWald had a limited license to use the ETHAN ALLEN Marks and the ETHAN ALLEN Family of Marks for the offering and sale of furniture and design services at his retail location. That limited license ended on July 27, 2007.

17. In March of 2007, DeWald notified plaintiff that he intended to cease doing business as an authorized Ethan Allen retailer.

18. By letter dated April 5, 2007, plaintiff set forth the procedure for DeWald to close the business and sell any remaining merchandise. A copy of that letter is attached to this

Verified Complaint as Exhibit A. The letter sets forth plaintiff's standard procedure whenever an authorized Ethan Allen retailer chooses to end its business.

19. The letter gave DeWald until July 27, 2007 to close his doors and complete any liquidation sales, and also stated, in pertinent part:

a) "As of Friday, July 27, we require that all building signage and awnings using the Ethan Allen name, trademark, or service mark at the Lexington Avenue location be removed from the property, and any areas of the building showing an outline of the Ethan Allen name, trademark, or service mark following the removal of such signage be eradicated, painted over or otherwise obliterated." Ex. A at 3.

b) "You are hereby reminded that the Peoples license to operate as an authorized Ethan Allen retailer will be terminated as of the close of business on Friday, July 27, and that any Ethan Allen branded product remaining in Peoples possession as of that date may not be disposed of or sold without receiving prior written approval and permission from Ethan Allen. . . . As I am sure you understand this prior written approval from Ethan Allen is necessary to protect the Ethan Allen brand image." *Id.*

20. Among other things, the letter also contains guidelines for DeWald's advertising of any liquidation or store closing sales:

a) "[A]s a national brand with a network of Design Centers, protection of the integrity of the Ethan Allen brand is of utmost importance. You will be responsible to ensure that there is no confusion in the minds of consumers as to who is going out of business . . ." *See* Ex. A at 2.

- b) "To protect the integrity of the Ethan Allen brand, drafts of all letters, newspapers, advertising, signage, radio and television scripts, or any liquidation sale materials using the Ethan Allen brand name must be submitted to our Advertising Department . . . for review at least 72 hours in advance of any publication or advertising deadline." *Id.*
- c) "If any non-Ethan Allen product is offered for sale after Tuesday, June 12, that product must be clearly distinguished from all remaining Ethan Allen brand product by means of tagging, signage, and a separate physical location. . . Throughout the liquidation sale, every effort must be made to protect the Ethan Allen brand from any appearance of being an 'off-price' brand." *Id.*
- d) "We also require that all advertising be confined to your local market so that the Ethan Allen brand image is not affected and there is no confusion in adjacent markets." *Id.*

21. At the time DeWald announced his intention to close his business, there were several other Ethan Allen retail design centers in New York City and the surrounding areas.

22. DeWald failed to comply with the terms of the April 5, 2007 letter. From April through July 2007, he continually refused to submit advertising for pre-approval, and published misleading advertisements in the *New York Times* stating, among other things, that "Ethan Allen is Selling Out!" These advertisements have caused consumer confusion, harmed the other Ethan Allen retailers in the New York area, and diluted the ETHAN ALLEN Marks and the ETHAN ALLEN Family of Marks.

23. DeWald did not complete his liquidation sale and close the business by July 27, 2007.

24. As of the date of this Verified Complaint, DeWald has not removed the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name from the signage at 192 Lexington Avenue.

25. Upon information and belief, DeWald has authorized others, including but not limited to defendant Pruitt, to use the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name without permission. Most recently, on August 17, 2007, defendant Pruitt ran an advertisement in the *New York Times* stating in relevant part:

FURNITURE & RUG AUCTION. Ethan Allen of New York City has CLOSED ITS DOORS. POV Auction Firm has obtained the remaining inventory and must liquidate it at public auction in conjunction with furniture and oriental rugs obtained from various liquidators and suppliers. THIS IS YOUR CHANCE TO PURCHASE FINE FURNITURE AND AREA RUGS FOR A FRACTION OF THEIR VALUE. LIVING ROOMS, UPHOLSTERY, LEATHER, CURIOS, BEDDING, GRANDFATHER CLOCKS AND MUCH MORE! FINE ORIENTAL RUGS FROM ALL OVER THE WORLD INCLUDING GENUINE HANDMADE PERSIAN RUGS. THIS AUCTION IS LIKE NONE OTHER!

A copy of this advertisement is attached to this Verified Complaint as Exhibit B.

26. The advertisement also provides that the auction is to be held at the former location of ETHAN ALLEN (in large type). *See* Ex. B. The small print at the bottom of the advertisement states: "Auction conducted by Herschel Pruitt." *Id.*

27. Defendants Peoples, JJ and DeWald have illegally and without plaintiff's permission continued to use the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name after July 27, 2007.

28. Defendant Pruitt never had plaintiff's permission to use the ETHAN ALLEN Marks or Family of Marks. The *New York Times* advertisement, as well as the resulting auction in Ethan Allen's name is fraudulent and illegal.

29. Plaintiff, through counsel, sent Peoples, DeWald and Pruitt a cease and desist letter on August 17, 2007, a copy of which is attached to this Verified Complaint as Exhibit C. Defendants did not respond to that letter and the auction proceeded over the weekend of August 18 and 19 as advertised.

30. During the first day of that auction (August 18), the Ethan Allen name was prominently displayed on the storefront, at least 50% of the items offered for sale were not Ethan Allen products, and customers were not advised of the actual brand or origin of the merchandise they were purchasing.

31. Defendants have refused to discontinue their use of the ETHAN ALLEN Marks and ETHAN ALLEN Family of Marks despite repeated requests to do so. Defendants are fully aware of plaintiff's intellectual property rights and have acted and continue to act in reckless disregard of those rights.

32. Defendants are using the Ethan Allen name in order to trade upon and utilize the goodwill established by Plaintiff in the ETHAN ALLEN Mark and the ETHAN ALLEN Family of Marks.

COUNT I
TRADEMARK INFRINGEMENT (15 U.S.C. § 1114(1))

33. Plaintiff realleges and incorporates herein by reference all of the allegations set forth in Paragraphs 1 through 32 above.

34. Plaintiff Ethan Allen has neither authorized nor consented to Defendants' continued use of the ETHAN ALLEN Marks and ETHAN ALLEN Family of Marks.

35. Defendants have marketed and promoted their "Furniture & Rug Auction" through the unauthorized use of the ETHAN ALLEN Marks and ETHAN ALLEN Family of

Marks, which has caused and is likely to cause confusion or mistake among prospective or actual customers, in violation of 15 U.S.C. § 1114(1).

36. Defendant's marketing and promotion of their "Furniture & Rug Auction" using the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name in violation of the Lanham Act was intentional and committed with full knowledge that these actions would cause confusion, mistake or deception.

37. Defendants' knowing use of the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name without authorization was willful, intentional and flagrant.

38. Defendants will continue to use and infringe the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name, causing irreparable injury to plaintiff Ethan Allen, unless enjoined by this Court. The threat of injury to plaintiff's goodwill and reputation, and the fact that the auction is set to continue for two more business days (Aug. 20-21), requires immediate injunctive relief.

39. Plaintiff Ethan Allen has no adequate remedy at law because it cannot be adequately compensated for the deprivation and dilution of the consumer recognition and goodwill built up under the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name over the years.

40. Defendants' continued operation of their "Furniture & Rug Auction" will cause plaintiff Ethan Allen irreparable injury because the goodwill related to the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name will be diluted and taken from plaintiff's control; customers will be confused and deceived into believing that the furniture

and other items being auctioned are all Ethan Allen products, when they are not; and other Ethan Allen retailers will lose profits and revenues that cannot be readily calculated.

41. Plaintiff Ethan Allen has a substantial likelihood of prevailing on the merits of this claim.

42. The balance of equities weighs in Ethan Allen's favor because the injury suffered by Ethan Allen outweighs any harm an injunction may impose on Defendants.

43. Accordingly, plaintiff Ethan Allen seeks monetary damages and a preliminary and permanent injunction enjoining Defendants from further infringement of the ETHAN ALLEN Marks or ETHAN ALLEN Family of Marks, as set forth in the Prayer for Relief.

COUNT II
FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a)(1)(A))

44. Plaintiff realleges and incorporates herein by reference all of the allegations set forth in Paragraphs 1 through 43 above.

45. Defendants, without the consent of Plaintiff, are using the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name in connection with its "Furniture & Rug Auction," which is likely to cause confusion or mistake, or to deceive consumers as to the affiliation, connection or association of Defendants with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' services or commercial activities by Plaintiff, in violation of 15 U.S.C. § 1125(a).

46. Upon information and belief, Defendants' use of the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name in connection with their "Furniture & Rug Auction" was in bad faith and in willful disregard of Plaintiff's rights, with intent to trade on and appropriate the reputation and goodwill that Plaintiff has built up in the

ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name, and to divert customers and revenues from Plaintiff and its authorized Ethan Allen retail locations.

47. The aforementioned actions and activities of Defendants have caused and will continue to cause damage and irreparable harm and injury to Plaintiff unless and until such time as they are enjoined by this Court.

48. Accordingly, plaintiff Ethan Allen seeks monetary damages and a preliminary and permanent injunction enjoining Defendants from further infringement of the ETHAN ALLEN Marks or ETHAN ALLEN Family of Marks, as set forth in the Prayer for Relief.

COUNT III
TRADEMARK DILUTION (15 U.S.C. § 1125(c))

49. Plaintiff realleges and incorporates herein by reference all of the allegations set forth in Paragraphs 1 through 48 above.

50. The ETHAN ALLEN Marks and ETHAN ALLEN Family of Marks are distinctive and famous, having been used by Plaintiff in connection with the provision of Plaintiff's goods and services since 1935.

51. Defendants improper use of the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name has caused and is causing the dilution of the distinctive quality of the ETHAN ALLEN Marks and ETHAN ALLEN Family of Marks in violation of 15 U.S.C. §1125(c).

52. Upon information and belief, Defendants' use of the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name in connection with their "Furniture & Rug Auction" was in bad faith and in willful disregard of Plaintiff's rights, with intent to trade on and appropriate the reputation and goodwill that Plaintiff has built up in the

ETHAN ALLEN Mark and the ETHAN ALLEN Family of Marks, and to divert customers and revenues from Plaintiff and its independently-owned and corporate retail locations. Defendants' use of the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name is damaging the goodwill associated with the ETHAN ALLEN Marks and ETHAN ALLEN Family of Marks.

53. The aforementioned actions and activities of Defendants have caused and will continue to cause damage and irreparable harm and injury to Plaintiff unless and until such time as they are enjoined by this Court.

54. Accordingly, plaintiff Ethan Allen seeks monetary damages and a preliminary and permanent injunction enjoining Defendants from further infringement of the ETHAN ALLEN Marks or ETHAN ALLEN Family of Marks, as set forth in the Prayer for Relief.

WHEREFORE, Plaintiff demands judgment in its favor and against defendants, Peoples Americana, Inc., JJ Peoples, Van DeWald and Herschel D. Pruitt, jointly and severally, and prays for an order preliminarily and permanently enjoining Defendants and their officers, directors, principals, agents, servants, employees, successors, assigns, affiliates, licensees, manufacturers, distributors, and all that are in active concert or participation with them, or any of them, from:

- a. conducting or advertising any auctions in the Ethan Allen name, or otherwise infringing or diluting the ETHAN ALLEN Mark or ETHAN ALLEN Family of Marks;
- b. displaying the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks and Ethan Allen brand name at the 192 Lexington Avenue location;

- c. making any statement or representation whatsoever with respect to products or services that falsely designates Plaintiff as the origin of the products or services or is otherwise false or misleading;
- d. otherwise making unauthorized use of or infringing upon the ETHAN ALLEN Marks, ETHAN ALLEN Family of Marks or other trademarks of Plaintiff; and
- e. any other conduct that would cause or is likely to cause confusion, mistake, or misunderstanding as to the source, affiliation, connection, or association of Defendants' products or services with Plaintiff or Plaintiff's goods and services.

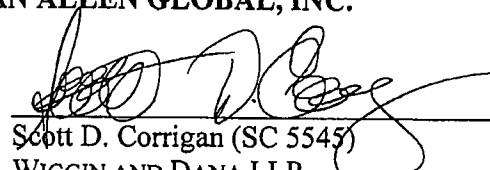
Plaintiff further prays:

- f. that the Court award Plaintiff the damages caused by Defendants' unlawful activities;
- g. that the Court order Defendants to account for and pay over to Plaintiff all profits realized by Defendant in connection with its unlawful activities;
- h. that the Court increase the damages awarded to Plaintiff up to three times, and that Plaintiff be awarded its costs and attorney fees, pursuant to 15 U.S.C. §1117 and/or as otherwise provided by law; and
- i. that Defendants be ordered to pay Plaintiff punitive damages as provided by law;
- j. that Defendants be ordered to pay Plaintiff the costs of this action and reasonable attorney's fees and investigatory fees;
- k. that Defendants be ordered to pay Plaintiff prejudgment interest; and
- l. that the Court order such further and additional relief as it may deem just and proper.

Respectfully submitted,

PLAINTIFF
ETHAN ALLEN GLOBAL, INC.

By:



Scott D. Corrigan (SC 5545)
WIGGIN AND DANA LLP
450 Lexington Avenue
New York, NY 10017
(212) 490-1700
(212) 490-0536 fax
sorrigan@wiggin.com

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Fax: (203) 782-2889
eamarante@wiggin.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ETHAN ALLEN GLOBAL, INC. :

Plaintiff, :

v. :

PEOPLES AMERICANA, INC., :
JJ PEOPLES, VAN DEWALD, and :
HERSCHEL D. PRUITT :

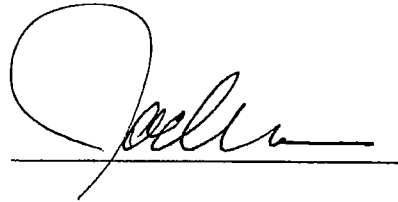
Defendants. :

Case No.

AUGUST 20, 2007

VERIFICATION

I, Jack DeKorne, on behalf of Ethan Allen Global, Inc., being duly sworn, depose and say that I have read the allegations in the Verified Complaint and they are true to the best of my knowledge, information and belief.



subscribed and sworn to me this
19th day of August, 2007, before me


Notary Public

Name:

My Commission Expires:

My Commission Expires July 31, 2011

EXHIBIT A

MAY-24-2007 09:27

ETHAN ALLEN LEGAL DEPT.

203 743 8254 P.05

April 5, 2007

**ETHAN
ALLEN**
ETHAN ALLEN GLOBAL, INC.

Red-EX
8565-7677-
4714

PERSONAL AND CONFIDENTIAL

Mr. Van DeWald
PEOPLES AMERICANA, INC
192 Lexington Avenue at 32nd Street
New York, New York 10016-6823

Dear Van:

You have informed Ethan Allen Global, Inc. ("Ethan Allen") that Peoples Americana, Inc. ("Peoples") intends to liquidate the Ethan Allen inventory at the Ethan Allen Design Center located at 192 Lexington Avenue at 32nd Street, New York, New York beginning on the Memorial Day weekend, and cease doing business as an authorized Ethan Allen retailer at that location.

While as of this writing you have not determined a date when you will cease doing business as an Ethan Allen retailer at the Lexington Avenue location, we will reasonably assume based on other similar liquidation events that the date will not go beyond Friday, July 27, 2007. Any other date should be requested by you in writing and received in Danbury by not later than close of business (EST) Friday, April 13, 2007. Failure to request an alternate date as described above will be deemed as confirmation of your agreement with and acceptance of Friday, July 27, 2007 as the date when you will cease doing business as an Ethan Allen retailer at the above location.

For good order's sake we should clarify some of our standard procedures that need to be put in place for the closing of this location and the operation of your liquidation sale.

OPEN ACCOUNT BALANCE AND UNDELIVERED BACKLOG

You have had credit extended to you in the past based on the available collateral of inventory at your locations, however, in view of your decision to liquidate the assets of your Design Center as referenced above, the following terms will apply going forward from the beginning of the liquidation sale.

Assuming the sale begins on the Memorial Day weekend, you will be required to send a check to Ethan Allen by overnight mail in the amount equal to the open balance owed to Ethan Allen, plus the amount of unshipped orders on the

MAY-24-2007 09:27

ETHAN ALLEN LEGAL DEPT.

203 743 8254 P.06

Peoples account as of the close of business on Monday, June 4, 2007 in order to bring all account balances to zero.

Mike Abdullah will coordinate with you on the financial side during this period to monitor your account and ensure that all required procedures are in place.

NEW ORDERS

In order to enable the designers at your location to complete projects they have begun with customers, Ethan Allen will accept new orders through the close of business (EST) on Tuesday, June 12, 2007 provided that during that time Peoples is not misusing the Ethan Allen name or service marks or selling any non-Ethan Allen products from the Ethan Allen Design Center. New orders on the Peoples account written after the close of business on Monday, June 4, 2007 must be sent to Ethan Allen, Attention: Mike Abdullah, and will only be processed on a cash-in-advance basis.

ADVERTISING AND CONSUMER COMMUNICATION

As I am sure you understand, as a national brand with a network of Design Centers, protection of the integrity of the Ethan Allen brand is of utmost importance. You will be responsible to ensure that there is no confusion in the minds of consumers as to who is going out of business, that the Ethan Allen brand is not damaged by misinformation or representations which cannot be fulfilled subsequent to the closing of your location, and that customers are properly serviced for as long as Peoples remains an authorized Ethan Allen retailer.

To protect the integrity of the Ethan Allen brand, drafts of all letters, newspaper advertising, signage, radio and television scripts, or any liquidation sale material using the Ethan Allen brand name must be submitted to our Advertising Department to the attention of Tara Kortze (FAX 203-743-8214 or email tkortze@ethanalleninc.com) for review at least 72 hours in advance of any publication or advertising deadline. The Ethan Allen product line, brand name, and trademark must not be used together with any other product line, brand name, or trademark in any advertising materials. If any non-Ethan Allen product is offered for sale after Tuesday, June 12, that product must be clearly distinguished from all remaining Ethan Allen brand product by means of tagging, signage, and a separate physical location (see paragraph on Standards of Operation below). Throughout the liquidation sale, every effort must be made to protect the Ethan Allen brand from any appearance of being an 'off price' brand.

We also require that all advertising be confined to your local market so that the Ethan Allen brand image is not affected and there is no confusion in adjacent markets. If at any time we believe you or those managing your sale do not honor the spirit and letter of these paragraphs on advertising and brand integrity we will move to stop the improper use of our brand.

MAY-24-2007 09:27

ETHAN ALLEN LEGAL DEPT.

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STANDARDS OF OPERATION

Throughout the sale you must continue to operate in accordance with the Ethan Allen's Standards of Operation. If any non-Ethan Allen product is offered for sale as referenced in the above paragraph, all exterior Ethan Allen point of sale signage, building signage, truck signage, and all other uses of the marks must be removed from the property, eradicated, painted over, or otherwise completely covered up prior to that time so that they are not visible to consumers; and the remaining interior showroom and business use of Ethan Allen trade or service marks, including sales documents, must be limited to note that Ethan Allen brand furniture and home furnishings as well as other brand name merchandise is offered for sale. Merchandise that is not Ethan Allen must be identified as non-Ethan Allen merchandise with the manufacturer's name clearly shown on the item and associated with each item on the sales invoice. All Ethan Allen merchandise will be sold to the public 'as-is' / 'where-is', with the exception of new orders referenced above.

STORE IDENTITY

As of Friday, July 27, we require that all building signage and awnings using the Ethan Allen name, trademark, or service mark at the Lexington Avenue location be removed from the property, and any areas of the building showing an outline of the Ethan Allen name, trademark, or service mark following the removal of such signage be eradicated, painted over or otherwise obliterated. We request that you email to me digital photographs documenting for our records that these actions have been satisfactorily completed. My email address is idekome@ethanalleninc.com.

ETHAN ALLEN BRAND INVENTORY

You are hereby reminded that the Peoples license to operate as an authorized Ethan Allen retailer will be terminated as of the close of business on Friday, July 27, and that any Ethan Allen branded product remaining in Peoples possession as of that date may not be disposed of or sold without receiving prior written approval and permission from Ethan Allen. Should it become necessary to sell remaining Ethan Allen brand inventory after the above termination date you will need to send a letter to my attention outlining the options you are considering to dispose of the remaining inventory prior to any disposal or sale of the remaining Ethan Allen branded product, and hold all remaining Ethan Allen branded product in your possession until written approval and permission from Ethan Allen has been received. As I am sure you understand this prior written approval from Ethan Allen is necessary to protect the Ethan Allen brand image.

In summary, here are the key dates to manage toward as you plan your sale:

- | | |
|--------------------|--|
| • Friday, April 13 | Deadline to request alternate termination date |
| • Monday, June 4 | Deadline to bring all account balances to zero |
| • Tuesday, June 12 | Deadline to place new Ethan Allen orders |
| • Friday, July 27 | Cease operations as authorized retailer |

MAY-24-2007 09:28

ETHAN ALLEN LEGAL DEPT.

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PRODUCT SERVICE

Notwithstanding that you are no longer permitted to sell Ethan Allen product after July 27, you will be required to fulfill all design and sales service obligations for Ethan Allen products sold during the liquidation sale.

AGREEMENTS

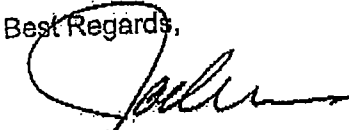
Effective as of the date you cease doing business at your design center located at Lexington Avenue at 32nd Street all licenses or other agreements with Ethan Allen Global, Inc. will be deemed terminated with no further force or effect.

It is understood that any approvals by Ethan Allen shall not relieve Peoples of its obligation to comply with any applicable laws or regulations regarding the promotion, advertising, or implementation of the sale or for post-approval failure to comply with the standards outlined above.

Except for the earlier notification required in the first paragraph, unless we hear from you in writing prior to the commencement of the liquidation sale, we will consider your silence as your agreement and your acceptance of all of the remaining terms and procedures of this letter.

Thank you for your attention to these matters and, as always, I am available to answer any questions you may have.

Best Regards,



Jack DeKorne
Vice President, Retailer Relations

EXHIBIT B

HUG 17 2007 05:08 PM EDT

CHURCHILL, SC. A federal judge ruled that there was no conspiracy to launder money. (BLOOMBERG NEWS)

LOS ANGELES The Los Angeles City Council gave the go-ahead to the \$1.2 billion project, which will raise the airport. It should be (AP)

WEST

WATER IS DISMISSED A federal judge dismissed a law suit brought by a coalition of ship-owners intended to curb the introduction of Great Lakes. The law, enacted earlier this year, prohibits ships from discharging ballast tanks or cargo holds of ships to ports, or if they do plan to discharge, the law prohibits any non-native species. On Sept. 11, Federal District Court, ruled that the law was unconstitutional. The species posed a "serious threat" to (LIBBY SANDER)

FOUND IN RIVER Two more sets of human remains were found in the wreckage of the Interstate raising the known death toll to 11. The divers got to only after cranes moved the wreckage. Mitchell, spokesman for the diving team, identified as those of Vera Peck, 50, of Dallas, 45, of White Bear Lake, the Hennepin office said. (AP)

YOUTH

STAY OPEN The Herndon Town Council kept its day laborer center open but to check the immigration status of the operator, Project Hope and Harmony, to check workers' documents. The center since it opened two years ago to provide for workers who used to flag down on its main street. Six months after the new mayor and two new council members (AP)

THWEST

ALTY TO CONSPIRACY A member of the alleged transport illegal immigrants by conspiracy charge. The man, Jose three guardsmen accused of helping him point on Interstate 35. The other two, Sgt. Clarence Hodge Jr., have pleaded a 10 years in prison and up to \$250,000 (AP)

MORE RAIN The remnants of Tropical Texas, snarling rush-hour traffic and underpasses brought seven inches of rain in Houston, where a person was killed storage unit collapsed. (AP)

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No day is complete
without
The New York Times

FURNITURE & RUG AUCTION

Ethan Allen of New York City has CLOSED ITS DOORS. POV Auction Firm has obtained the remaining inventory and must liquidate it at public auction in conjunction with furniture and oriental rugs obtained from various liquidators and suppliers. THIS IS YOUR CHANCE TO PURCHASE FINE FURNITURE AND AREA RUGS FOR A FRACTION OF THEIR VALUE. LIVING ROOMS, UPHOLSTERY, LEATHER, CURIOS, BEDDING, GRANDFATHER CLOCKS AND MUCH MORE! FINE ORIENTAL RUGS FROM ALL OVER THE WORLD INCLUDING GENUINE HANDMADE PERSIAN RUGS. THIS AUCTION IS LIKE NONE OTHER!

AUCTION DATES & TIMES

SATURDAY, AUG. 18TH AT 1PM
SUNDAY, AUG. 19TH AT 1PM
MONDAY, AUG. 20TH AT 6:30PM
TUESDAY, AUG. 21ST AT 6:30PM

2 HOUR PREVIEW PRIOR TO EACH SCHEDULED AUCTION TIME

AUCTION TO BE HELD AT THE
FORMER LOCATION OF

ETHAN ALLEN

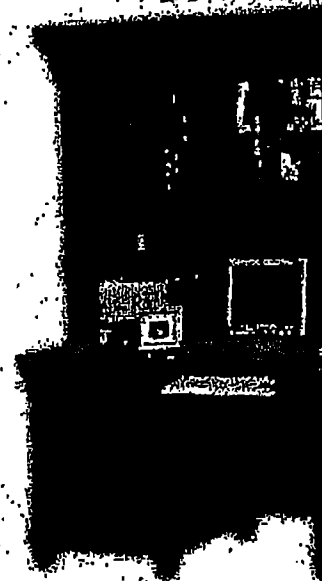
192 LEXINGTON AVE • NEW YORK, NY 10016
PHONE 212-213-0600

All merchandise will be sold as is. Merchandise must be picked up within 48 hours. All items must be paid for day of auction. A 14% buyers premium is in effect on all purchases during auction days. Auction is to be held at the former location of Ethan Allen. Certain items are subject to removal. Terms of Payment: Visa, MasterCard, American Express, Discover, Certified Check, and Cash. All other forms of payment, including credit cards, are not accepted. Auction conducted by Henschel Auction.

LIVING ROOMS
DINING ROOMS
BEDROOMS
LEATHER
ACCESSORIES
BEDDING
ORIENTAL RUGS
& MORE!!!

YOU ABSOLUTELY
DON'T WANT TO MISS
THIS AUCTION!!!

Quality
Computer
DELIVER
TO YOU



General credenza & butch
from our new Switzerland Series

And just the way you want
from one of the distinctive
collections offered by Computer
Furniture Direct. Enjoy the natural



1-800-555-6126 • www

Please refer to ad on

Israel to Go

NEWS ANALYSIS

THE NEW YORK TIMES INTERNATIONAL FRIDAY AUGUST 17, 2007

** TOTAL PAGE.02 **

EXHIBIT C

Wiggin and Dana LLP
One Century Tower
P.O. Box 1832
New Haven, Connecticut
06508-1832
www.wiggin.com

Erika L. Amarante
203.498.4493
203.782.2889 fax
eamarante@wiggin.com

VIA FAX AND/OR EMAIL

August 17, 2007

WIGGIN AND DANA
Counsellors at Law

Mr. Van De Wald
PEOPLES AMERICANA, INC
192 Lexington Avenue at 32nd Street
New York, NY 10016-6823
Email: vandewald@msn.com

Herschel D. Pruitt
601 9th Street
Wheatland, WY 82201
Fax: 307-322-3034
Email: Hersh@twinpineswy.com

Re: Cease & Desist: Auction of Ethan Allen Merchandise

Dear Messrs. De Wald and Pruitt:

This firm represents Ethan Allen Global, Inc. ("Ethan Allen"). The affiliation that PEOPLES AMERICANA, INC. ("PEOPLES") and Mr. De Wald once had with Ethan Allen ended on July 27, 2007. PEOPLES' and Mr. De Wald's right to use the "Ethan Allen" trademarks or logo ended at that time.

Mr. Pruitt has advertised an auction of Ethan Allen merchandise at PEOPLES' former location, to take place over the next several days. See New York Times advertisement, dated August 17, 2007 (attached). The advertisement wrongfully asserts that "Ethan Allen of New York City" is closing its doors and illegally uses the "Ethan Allen" trademark without Ethan Allen's approval or consent.

This advertisement and the proposed auction are blatant violations of PEOPLES' and Mr. De Wald's post-termination obligations. They also violate state and federal law, including Ethan Allen's federally-protected trademarks. Ethan Allen is prepared to protect its rights to the fullest extent of the law.

Accordingly, you must cease and desist from holding the illegally and fraudulently advertised auction. If you do not comply with this notice, Ethan Allen will have no choice but to bring an action against PEOPLES, Mr. De Wald and Mr. Pruitt for violation of its federal trademark and other applicable rights. That action will request, at a minimum, injunctive relief, compensatory damages, punitive damages, attorneys' fees and any other remedies available under the law.

Mr. Van De Wald
PEOPLES AMERICANA, INC.

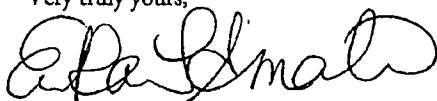
August 17, 2007
Page 2

Nothing in this letter may be viewed as a waiver of Ethan Allen's legal rights, all of which are expressly reserved.

WIGGIN AND DANA

Counsellors at Law

Very truly yours,

A handwritten signature in black ink, appearing to read 'Erika L. Amarante', written over a horizontal line.

Erika L. Amarante

Enclosure

cc: Thomas J. Kowalski, fax 212-588-0500, email: TKowalski@fhlaw.com

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HUG 17 2007 09:08 FR 111

ST. LOUIS, Mo. — The St. Louis airport is set to be the site of a major expansion project, which will increase the airport's capacity to handle more flights.

PORTLAND, Ore. — The Port of Portland is set to be the site of a major expansion project, which will increase the port's capacity to handle more cargo.

NEW YORK — The New York City Police Department is set to be the site of a major expansion project, which will increase the department's capacity to handle more cases.

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STAY OPEN The Herndon Town Council has kept its day laborer center open but to check the immigration status of the workers. Project Hope and Harmony, a check workers' documents. The center, since it opened two years ago to provide for workers who used to flag down on the main street. Six months after the new mayor and two new council members took office.

FINWEST — The Finwest Bank is set to be the site of a major expansion project, which will increase the bank's capacity to handle more deposits.

ALTY TO CONSPIRACY A member of the helping transport illegal immigrants by conspiracy charge. The man, Jose, three guardsmen accused of helping him point on Interstate 35. The other two, Sgt. Clarence Hodge Jr., have pleaded a 10 years in prison and up to \$250,000 fine.

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2 HOUR PREVIEW PRIOR TO EACH SCHEDULED AUCTION TIME

AUCTION TO BE HELD AT THE
 FORMER LOCATION OF

ETHAN ALLEN

192 LEXINGTON AVE • NEW YORK, NY 10018

PHONE 212-213-0500

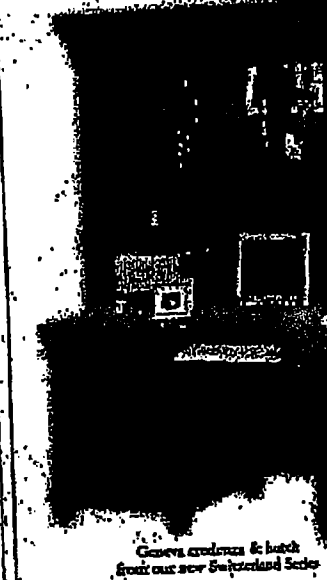
LIVING ROOMS
 DINING ROOMS
 BEDROOMS
 LEATHER
 ACCESSORIES
 BEDDING
 ORIENTAL RUGS
 & MORE!!!

YOU ABSOLUTELY
 DON'T WANT TO MISS
 THIS AUCTION!!!

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North America Auctions
 www.northamericanauctions.com
 1-800-555-8128

Quality Computer
 DELIVER TO YOU



Geneva chandelier & batch
 from our new Swissland Sale

Find just the style you want
 from one of the most
 experienced and by Computer
 Furniture Direct. Enjoy the Internet



1-800-555-8128 • www

Please refer to ad on

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NEWS ANALYSIS

THE NEW YORK TIMES INTERNATIONAL-FRIDAY AUGUST 17, 2007

*** TOTAL PAGE.02 ***